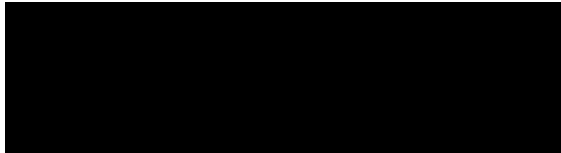


U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: EAC 02 120 52846 Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:  
Beneficiary

SEP 14 2009

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

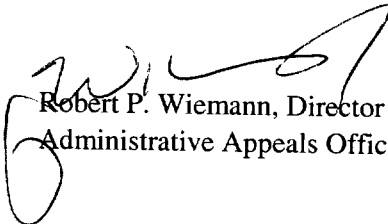
ON BEHALF OF PETITIONER:

**PHILIP COLBY**

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying marks should be  
present clearly on all documents  
to prevent unauthorized  
reproduction of personal data

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly and untimely filed.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2002 and claims to be an integrated engineering construction services business. The petitioner claims to be a branch of Zecon Engineers, Builders and Constructions, Meaanine, located Pakistan. The petitioner seeks to employ the beneficiary in the United States as a general manager. The director determined that the record was not persuasive in demonstrating that the beneficiary will be employed in a primarily executive or managerial capacity or that the petitioner will be in a position to support a managerial or executive position within one year of operation.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

In the instant case, the beneficiary filed the notice of appeal. There is no indication in the record that the beneficiary has standing to file. The record on appeal does not depict the beneficiary as being an “affected party,” as defined. *See* 8 C.F.R. § 103.3 (a)(1)(iii)(B). Therefore, the notice of appeal has been improperly filed. *See* 8 C.F.R. § 103.3 (a)(2)(v).

In addition, the record indicates that the director issued the decision on August 27, 2002. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. According to the date stamp on the Form I-290B Notice of Appeal, it was received by CIS on October 1, 2002, or 35 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was improperly and untimely filed, the appeal must be rejected.

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is rejected.